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IN THE

JOHN F. DAVIS, CLERK

Supreme Court of the United States**October Term, 1964****Number 178**

BEN W. FORTSON, JR., as Secretary of State
of the State of Georgia,

vs.

Appellant,

JAMES W. DORSEY, DAN I. MacINTYRE, III,
and JAMES EDWARD MANGET,

Appellees.

**On Appeal from the United States District Court for
the Northern District of Georgia**

**MOTION FOR ADVANCEMENT OF
CASE ON CALENDAR**

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November 6, 1964

EUGENE COOK**The Attorney General****PAUL RODGERS****Assistant Attorney General***Counsel for Appellant***WILLIAM C. O'KELLEY****EDWIN F. HUNT****CHARLES A. MOYE, JR.***Counsel for Appellees*

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To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:

Come now the parties to the above entitled cause, and
pursuant to Rule 43 (4) of the Revised Rules of the
Court, move the Court to issue an order placing this

cause on the calendar for argument in December 1964, and as ground therefor, show that:

1.

The General Assembly of the State of Georgia will convene in regular session on January 11, 1965, and the parties believe that it will adjourn sine die on or about March 12, 1965.¹

2.

During such regular session, the General Assembly is under a duty to reapportion its House of Representatives according to population as required by the orders of the United States District Court for the Northern District of Georgia in Civil Action No. 7883, *Toombs v. Fortson, et al.*, rendered on June 19, 24 and 30, and November 3, 1964.

3.

The State Senate was reapportioned according to population by an Act, approved October 5, 1962,² as earlier required by the District Court in *Toombs v. Fortson*.³ The Act divided the fifty-four member Senate into fifty-four districts of substantially equal population, twenty-one of which are wholly contained within the State's seven most populous counties. The Act provides that "Each Senator must be a resident of his own Senatorial District and shall be elected by the voters of his own District, except that the Senators from those Senatorial Districts consisting of less than one county shall be

¹ See Art. III, Sec. IV, Par. III, State Constitution; Ga. Code Ann., Sec. 2-1603.

² Ga. Laws, Sept.-Oct., 1962, Extra. Sess., p. 7, at pp. 14-31; Ga. Code Ann., Sec. 47-102.

³ (D.C. - N.D. Ga. - 1962) 205 F. Supp. 248.

elected by all the voters of the county in which such Senatorial District is located."⁴ The Appellees in this cause challenged the validity of such Act, insofar as it requires the county-at-large election of State senators in the seven most populous counties, as being in violation of the Fourteenth Amendment to the Federal Constitution. The District Court below rendered judgment in favor of the Appellees requiring the election of these senators within their respective districts, and this judgment is now before the Court for review on direct appeal.

4.

The parties believe that the determination of the issue presented in the above entitled cause by the Court prior to March 12, 1965, may be of value to the General Assembly in the performance of its duty to reapportion the House of Representatives according to population. Consequently, the parties seek to have this cause argued in December 1964 in order to enhance the possibility that the Court may render decision therein prior to March 12, 1965.

5.

In order to facilitate oral argument of this cause in December 1964, counsel for the respective parties hereby stipulate that the Appellant will file his brief on the merits with the Court on or before November 10, 1964, and that the Appellees will file their brief on the merits with the Court within twenty days after their counsel are served with copies of the Appellant's brief on the merits.

⁴ Ga. Laws, Sept.-Oct., 1962, Extra. Sess., p. 7; at p. 30; Ga. Code Ann., Sec. 47-102.

WHEREFORE, the parties move the Court to issue an order placing this cause on the calendar for argument during December 1964.

Respectfully submitted,

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